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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the International Commission of Jurists, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[11 February 1994]

The Madrid Principles on the Relationship between the Media and Judicial Independence

Introduction

1. A group of 39 distinguished legal experts and media representatives, convened by the International Commission of Jurists (ICJ), its Centre for the Independence of Judges and Lawyers (CIJL), and the Spanish Committee of UNICEF, met for three days at Madrid from 18 to 20 January 1994. The objectives of the meeting were:

(a) To examine the relationship between the media and judicial independence as guaranteed by the 1985 United Nations Basic Principles on the Independence of the Judiciary;

(b) To formulate principles addressing the relationship between freedom of expression and judicial independence.

2. The participants came from: Australia, Austria, Brazil, Bulgaria, Croatia, France, Germany, Ghana, India, Jordan, the Netherlands, Norway, Palestine, Poland, Portugal, Senegal, Slovakia, Spain, Sri Lanka, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland.

3. The following are the Principles:

THE MADRID PRINCIPLES on the Relationship between the Media and Judicial Independence

Preamble

Freedom of the media, which is an integral part of freedom of expression is essential in a democratic society governed by the Rule of Law. It is the responsibility of judges to recognise and give effect to freedom of the media by applying a basic presumption in their favour and by permitting only such restrictions on freedom of the media as are authorised by the International Covenant on Civil and Political Rights ("International Covenant") and are specified in precise laws.

The media have an obligation to respect the rights of individuals, protected by the International Covenant, and the independence of the judiciary.

These principles are drafted as minimum standards and may not be used to detract from existing higher standards of protection of the freedom of expression.

The Basic Principle

1. Freedom of expression 1/ (including freedom of the media) constitutes one of the essential foundations of every society which claims to be democratic. It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence.

2. This principle can only be departed from in the circumstances envisaged in the International Covenant on Civil and Political Rights, as interpreted by the 1984 Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4).

3. The right to comment on the administration of justice shall not be subject to any special restrictions.

Scope of the Basic Principle

4. The Basic Principle does not exclude the preservation by law of secrecy during the investigation of crime even where investigation forms part of the judicial process. Secrecy in such circumstances must be regarded as being mainly for the benefit of persons who are suspected or accused and to preserve the presumption of innocence. It shall not restrict the right of any such person to communicate to the press information about the investigation or the circumstances being investigated.

5. The Basic Principle does not include the holding in camera of proceedings intended to achieve conciliation or settlement of private causes.

6. The Basic Principle does not require a right to broadcast live or recorded court proceedings. Where this is permitted, the Basic Principle shall remain applicable.

Restrictions

7. Any restriction of the Basic Principle must be strictly prescribed by law. Where any such law confers a discretion or power, that discretion or power must be exercised only by a judge.

8. Where a judge has a power to restrict the Basic Principle and is contemplating the exercise of that power, the media (as well as any other person affected) shall have the right to be heard for the purpose of objecting to the exercise of that power and, if exercised, a right of appeal.

9. Laws may authorise restrictions of the Basic Principle to the extent necessary in a democratic society for the protection of minors and of members of other groups in need of special protection.

1/ As defined by article 19 of the International Covenant on Civil and Political Rights (see annex II).

10. Laws may restrict the Basic Principle in relation to criminal proceedings in the interest of the administration of justice to the extent necessary in a democratic society

(a) for the prevention of serious prejudice to a defendant;

(b) for the prevention of serious harm to or improper pressure being placed upon a witness, a member of a jury, or a victim.

11. Where a restriction of the Basic Principle is sought on the grounds of national security 2/ this should not jeopardise the rights of the parties, including the rights of the defence. The defence and the media shall have the right, to the greatest extent possible, to know the grounds on which the restriction is sought (subject, if necessary, to a duty of confidentiality if the restriction is imposed) and shall have the right to contest this restriction.

12. In civil proceedings, restrictions of the Basic Principle may be imposed if authorised by law to the extent necessary in a democratic society to prevent serious harm to the legitimate interests of a private party.

13. No restriction shall be imposed in an arbitrary or discriminatory manner.

14. No restriction shall be imposed except strictly to the minimum extent and for the minimum time necessary to achieve its purpose, and no restriction shall be imposed if a more limited restriction would be likely to achieve that purpose. The burden of proof shall rest on the party requesting the restriction. Moreover, the order to restrict shall be subject to review by a judge.

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2/ For the proper scope of the term "national security", see sections 29-32 of the Siracusa Principles attached in annex III.

Annex I

STRATEGIES FOR IMPLEMENTATION

1. Judges should receive guidance in dealing with the press. Judges should be encouraged to assist the press by providing summaries of long or complex judgements of matters of public interest and by other appropriate measures.

2. Judges shall not be forbidden to answer questions from the press relating to the administration of justice, though reasonable guidelines as to dealing with such questions may be formulated by the judiciary, which may regulate discussion of identifiable proceedings.

3. The balance between independence of the judiciary, freedom of the press and respect of the rights of the individual - particularly of minors and other persons in need of special protection - is difficult to achieve. Consequently, it is indispensable that one or more of the following measures are placed at the disposal of affected persons or groups: legal recourse, press council, Ombudsman for the press, with the understanding that such circumstances can be avoided to a large extent by establishing a Code of Ethics for the media which should be elaborated by the profession itself.

Annex II

EXTRACTS FROM THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 3/

Annex III

EXTRACTS FROM THE SIRACUSA PRINCIPLES ON THE LIMITATION AND DEROGATION PROVISIONS IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 4/

3/ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966.

4/ United Nations document E/CN.4/1985/4, reprinted in 36 ICJ Review 47 (June 1986).